

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,

Debtor.¹

PROMESA

Title III

No. 17 BK 3283-LTS
(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO HIGHWAYS AND TRANSPORTATION
AUTHORITY,

Debtor.

PROMESA

Title III

No. 17 BK 3567-LTS

**LIMITED OBJECTION OF AMBAC ASSURANCE CORPORATION, ASSURED
GUARANTY CORP., ASSURED GUARANTY MUNICIPAL CORP., FINANCIAL
GUARANTY INSURANCE COMPANY, AND NATIONAL PUBLIC FINANCE
GUARANTEE CORPORATION TO URGENT MOTION FOR ENTRY OF AN ORDER
APPROVING FOURTH AMENDED STIPULATION REGARDING THE TOLLING OF
STATUTE OF LIMITATIONS (ECF NO. 15676 IN CASE NO. 17-3283 and ECF NO. 958
IN CASE NO. 17-3567)**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Pursuant to the Court’s scheduling order (ECF No. 15685), Ambac Assurance Corporation (“Ambac”), Assured Guaranty Corp., Assured Guaranty Municipal Corp. (together, “Assured”), Financial Guaranty Insurance Company (“FGIC”), and National Public Finance Guarantee Corporation (“National”) (collectively, the “Monolines”) respectfully submit this Limited Objection to the *Urgent Motion for Entry of an Order Approving Fourth Amended Stipulation Between the Commonwealth of Puerto Rico and the Puerto Rico Highways and Transportation Authority Regarding the Tolling of Statute of Limitations* (ECF No. 15676 in Case No. 17-3283 and ECF No. 958 in Case No. 17-3567, “Urgent Motion”).²

1. The Urgent Motion requests the Court’s approval of a “Fourth Amended Stipulation,” attached as Exhibit A to the Urgent Motion, that would broadly toll the statute of limitations applicable to a host of potential actions to be brought by the Commonwealth of Puerto Rico (the “Commonwealth”) and the Puerto Rico Highways and Transportation Authority (“HTA”) pursuant to Sections 546(a), 549(d) and 108(a)(2) of the Bankruptcy Code regarding certain transfers between the Commonwealth and HTA (the “Proposed Tolling Stipulation”).

2. Although the Monolines do not object to extending the statute of limitations for the avoidance actions that are covered by the Proposed Tolling Stipulation, they *do* object to the fact that the Proposed Tolling Stipulation continues to *explicitly carve out* certain actions that would vindicate HTA’s rights to Excise Taxes wrongfully transferred to the Commonwealth (the “HTA Actions”).³ The statutes of limitations for the HTA Actions had been previously extended by another tolling stipulation entered on January 8, 2020 (the “HTA Tolling Stipulation”)(ECF No.

² All capitalized terms not defined herein shall have the meanings ascribed to them in the Urgent Motion.

³ For the avoidance of doubt, the limitations period for claims arising under Section 549 of the Bankruptcy Code is “the earlier of . . . (1) two years after the date of the transfer sought to be avoided ; or (2) the time the case is closed.” 11 U.S.C. § 549(d). No tolling is required with respect to any claims under Section 549 with respect to which the limitations period has not yet expired, including any claims under Section 549 that may continue to arise in the future.

608 in Case No. 17-3567). Now, however, as with the Third Amended Stipulation (ECF No. 913 in Case No. 17-3567) (as defined in the Urgent Motion), the new Proposed Tolling Stipulation unfairly singles out and *excludes* the claims that had been previously covered by the HTA Tolling Stipulation.

3. The Court should reject this narrow carve-out that seeks to impair at least some of HTA's claims. The Monolines reiterate and incorporate by reference the reasons already set forth in the Monolines' July 23, 2020 reply brief in support of their request for bridge relief which would have preserved those claims. *See* ECF No. 13814 in Case No. 17-3283 (the "Monolines' Reply"). As discussed in the Monolines' Reply, it is critical that these HTA Actions be preserved, by one means or another, pending a final determination of HTA's property interests in the Excise Taxes—an issue that is currently being litigated and will directly affect the merits of the HTA Actions. While the Monolines recognize that the Court previously entered an Order (over similar limited objections by the Monolines) approving the Third Amended Stipulation (ECF No. 913), the Monolines respectfully re-affirm their positions here in view of the importance and substantive nature of these issues, which continue to be litigated on appeal. Accordingly, the Monolines assert that the HTA Actions should have been included, both here and in ECF No. 913, among the many other claims that are already being preserved by the parties' agreements. The Monolines also believe that, in light of their previous and continuing efforts to preserve the HTA Actions, the limitations periods for those actions have been and remain equitably tolled. The Monolines reserve all rights in connection with the HTA Actions.

4. The Monolines also note that under the specific terms of the Third Amended Stipulation, the Parties to such Stipulation had the right to extend the tolling period set forth therein "upon thirty (30) days' prior written notice and service of such notice upon the Court and counsel

for the HTA Parties and the Creditors' Committee" (ECF 913, ¶ 2). The Urgent Motion was submitted to the Court on January 21, 2021.

CONCLUSION

5. For the reasons set forth herein, the Monolines continue to assert that the interests of justice require tolling the limitations period for the HTA Actions. The Court should require modification of the Proposed Tolling Stipulation (as well as the Third Amended Stipulation) accordingly.

Dated: February 4, 2021
New York, New York

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CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2021, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the District of Puerto Rico by using the CM/ECF system, which sent notification of such filing to all CM/ECF participants.

New York, New York
February 4, 2021

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